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September 20, 2011

**By ECF**

Honorable Sterling Johnson, Jr.  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York

**Re: Government Employees Insurance Co. et al. v. Ivy Med Distributors Inc., et al.**  
**Docket No.: CV 10 3037 (SJ)(RER)**  
**Our File No.: 5100-2**

Dear Judge Johnson:

I write pursuant to the Court's individual rules for the purposes of requesting permission to immediately move to enforce the terms of the settlement between Plaintiffs, Government Employees Insurance Co., GEICO Indemnity Co., GEICO General Insurance Company and GEICO Casualty Co. (collectively "GEICO") and Defendants, Millennium Supplies, Inc. and its owner, Alex Tardakovsky (collectively the "Millennium Defendants").

Effective July 13, 2011, GEICO and the Millennium Defendants entered into a confidential settlement agreement (the "Agreement").<sup>1</sup> The Agreement was signed by the Millennium Defendants on July 8, 2011 and by GEICO on July 13, 2011. The Agreement resolved all of GEICO's claims against the Millennium Defendants asserted in this action, as well as all claims by Millennium against GEICO seeking payment of outstanding claims for durable medical equipment.

The implementation of the settlement was clearly spelled out in the Agreement.

Paragraph 4.A. required the Millennium Defendants to dismiss, with prejudice, all collection lawsuits and/or arbitrations then pending against GEICO, and to have their collection counsel execute and return stipulations of dismissal, with prejudice, in those cases within 30 days following receipt. Paragraph 4.C

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<sup>1</sup> The Parties agreed that the Agreement would be confidential except "as required to enforce" the Agreement, and as such, we have cited only to those paragraphs that are relevant to resolving this dispute.

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imposes liquidated damages on the Millennium Defendants for their non compliance with paragraph 4.A., requiring them to pay GEICO an amount equal to the face value of the lawsuits (i.e. the amount of the ad damnum clause) as well as reimbursing GEICO for its legal fees incurred in securing compliance with the Agreement.

In addition, paragraph 5.A of the Agreement states as follows:

TM Defendants agree that they shall not, in the future, submit or cause to be submitted bills to, or commence, or cause to be commenced, any lawsuits, arbitrations, or other proceedings against GEICO for healthcare related services and/or goods provided by or through Millennium. TM Defendants further agree that if they submit or cause to be submitted bills to GEICO or commence or cause to be commenced lawsuits, arbitrations or other proceedings against GEICO which are prohibited by this paragraph 5, and do not withdraw such bills, lawsuits, arbitrations or other proceedings within thirty (30) days following written notice in accordance with paragraph 6, then the TM Defendants will become immediately liable to and pay GEICO (i) an amount equal to the amount of the bill submitted or the amount sought in such lawsuit, arbitration or other proceeding, as well as (ii) the legal fees, costs and disbursements incurred by GEICO in securing compliance with this agreement.

The timeline of the relevant post-settlement events are as follows:

July 13, 2011	Effective date of settlement agreement
July 14, 2011	Stipulations of dismissal with prejudice sent by GEICO's staff counsel to Maria Diglio, Esq. (counsel for the Millennium Defendants) covering all collection actions then pending and known to GEICO
July 14, 2011	Millennium files and serves 77 lawsuits on GEICO (6 days after it has signed the settlement agreement) seeking payment from GEICO in the amount of \$148,176.71.
August 17, 2011	Rivkin Radler sends to Maria Diglio, Esq. (counsel for the Millennium Defendants) notice (by overnight mail) that the agreement has been violated and includes stipulations of dismissal, with prejudice, in the 77 cases filed and served on July 14, 2011.
August 19, 2011	Rivkin Radler sends to Maria Diglio, Esq. (counsel for the Millennium Defendants) notice (by overnight mail) that the agreement was been violated because 11 stipulations of dismissal, with prejudice, originally sent on July 14,



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2011, have not been signed and returned. The amount sought in those suits totals \$26,689.29.

September 15, 2011 Millennium files and serves 100 new lawsuits on GEICO, seeking payment in excess of \$175,000.00.

September 16, 2011 Rivkin Radler sends further notice to Maria Diglio, Esq. (counsel for the Millennium Defendants) advising of the violations – a copy of the letter is attached as Exhibit “1”.

In short, the Millennium Defendants have not, as of today, complied with the terms of the Agreement by providing GEICO with the stipulations of dismissal on the 88 collection cases that were to be discontinued. In addition, and to top it all off, they have now further violated the Agreement by commencing an additional 100 collection cases against GEICO, requiring the Company to waste time, money and legal fees to address the cases. Pursuant to the Agreement, GEICO is entitled to the entry of an order, as follows: (i) directing that the Millennium Defendants dismiss all of the 188 cases that are pending against GEICO, and (ii) directing that the Millennium Defendants pay GEICO the sum of \$174,866.00 as well as reimbursing GEICO for its legal fees associated with enforcing the Agreement.<sup>2</sup>

We are prepared to file this motion within 24 hours of receiving permission from the Court.

Respectfully submitted,

RIVKIN RADLER LLP

*Barry I. Levy*

Barry I. Levy

cc: Magistrate-Judge Ramon E. Reyes  
All Counsel (by ECF)

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<sup>2</sup> Paragraph 11 of the Agreement states: “In any action by GEICO to enforce the terms of this Agreement where it prevails, it shall be entitled to recover its costs, including reasonable attorneys’ fees, from the TM Defendants.”